

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department to Increase Penetration Rate for Discounted Service))))	D.T.E. 01-106
--	------------------	---------------

COMMENTS OF FITCHBURG GAS AND ELECTRIC LIGHT COMPANY

I. INTRODUCTION

On June 19, 2003, the Department of Telecommunications and Energy ("Department") issued a memorandum providing that, at an April 29, 2003 meeting, it proposed a computer matching program through which electric distribution companies, gas distribution companies and eligible telecommunications carriers would exchange customer eligibility information with the Executive Office of Health and Human Services ("EOHHS") for the sole purpose of enrolling eligible customers in the utilities' low income discount programs (the "Memorandum"). In its memorandum, the Department sought comments on the following briefing question:

Please discuss any legal impediment and legal justification for utility participation in a computer-matching program with EOHHS that would involve the electronic transfer of all residential accounts to EOHHS for the sole purpose of identifying customers eligible for discounted service with subsequent destruction of non-matching data.

As a distribution company, Fitchburg Gas and Electric Light Company ("FG&E") would be subject to the requirements of the proposed matching program. FG&E understands that the program would involve the utilities transferring an electronic file on a quarterly basis that contains all residential customer accounts in their service territory. EOHHS would then match its file with those of the utilities to identify any customer that is receiving a public benefit with

the income criteria of 175% of poverty. EOHHS would then send the utilities a file of all customers that should be on the low-income rate, as well as those customers that should be removed, with the exception of Fuel Assistance customers. The data sent by the utilities would be used for the sole purpose of the matching program and would be destroyed once the match is complete.

In response to the Department's briefing question, as discussed below, FG&E points out several aspects of the matching program that may raise the potential for invasion of customers' privacy, and thus may be an impediment to utility participation in the matching program.¹ FG&E appreciates the opportunity to comment on this issue and work with the Department to explore mechanisms for expanding participation in its Residential Discount Rate ("RDR") program.

II. COMMENTS

The Restructuring Act requires that distribution companies provide discounted rates for low income customers, and conduct "substantial outreach efforts" to make the low income discount available to eligible customers. G.L. c. 164, §1F (4)(i). The Restructuring Act further provides that such outreach may include "establishing an automated program of matching customer accounts with lists of recipients of said means tested public benefit programs and based on the results of said matching program, to presumptively offer a low-income discount rate to eligible customers so identified" G.L. c. 164, §1F (4)(i).

¹ In addition, the Department has not addressed the issue of cost recovery in this proceeding. While FG&E expects to be able to implement the matching program without a significant cost impact, FG&E is concerned that enrollment in the low income rates for both its electric and gas divisions could increase significantly, which would have significant negative financial consequences. In addition, there may be fees from the state agencies associated with the matching program that are passed on to FG&E. FG&E believes that cost impacts associated with the program and additional enrollments should be considered by the Department in this

Given that the Department's proposed matching program involves the sharing of customer information by the utility, in some cases without the customer's prior consent, the invasion of customers' privacy may be an impediment to utility participation in the matching program. The Massachusetts privacy law provides that a person "shall have a right against unreasonable, substantial or serious interference with his privacy." G.L. c. 214, § 1B. Although the Legislature specifically provided for a matching program in G.L. c. 164, §1F (4)(i), no statutory provision exempts G.L. c. 164, §1F (4)(i) from the requirements of the privacy statute, G.L. c. 214, §1B. In the absence of legislative intent that G.L. c. 164, §1F (4)(i) should override the requirements of the privacy statute, the Department's implementation of a matching program must not result in an invasion of privacy. As discussed below, several aspects of the matching program raise concerns of customer privacy rights under the privacy and other statutes.

With respect to the information provided by the utilities to EOHHS, the Department would require utilities to transfer account information for all residential customers, rather than limiting the program to people who have applied for public benefits programs. Accordingly, people who have not applied for any public benefit, and thus have done nothing to indicate their assent to have their personal information turned over to a government agency, will be affected by the proposed program. The lack of consent or opportunity to opt out of having one's personal information disclosed raises possible privacy concerns. In D.T.E. 01-54, in which the Department required utilities to share customer information with competitive suppliers, the Department addressed the release of sensitive customer information by allowing an opportunity for customers to opt-out of having their information released. D.T.E. 01-54 at 12, 25-27 (Phase I) (2001).

proceeding and appropriate recovery mechanisms or rate adjustments provided.

Similarly, there may be concerns with respect to the government agencies verifying, without applicant consent, that a customer is enrolled in a public benefit program and is eligible for the low income discount rate.² The Department previously solicited comments on its proposal for a check box that would grant agencies the authority to release eligibility information to utilities, and on the possibility of making such grant of authority mandatory to receipt of public benefits. In the meantime, the disclosure of such information to the utilities may contravene Department of Transitional Assistance ("DTA") and Division of Medical Assistance ("DMA") regulations concerning disclosure of personal information. For example, pursuant to 106 CMR 104.010, the DTA may not permit access to personal data to any person other than a DTA employee or the data subject unless "such access is authorized by state or federal statute or regulation . . . or is approved by the data subject whose personal data is sought." Under the DMA regulations, 130 CMR 515.007, the "use and disclosure of information concerning applicants, members, and legally liable third parties is restricted to purposes directly connected to the administration of MassHealth as governed by state and federal law."

In its Memorandum, the Department states that the utilities would transfer all "residential accounts," but does not identify what information would be transferred. The Department does not indicate whether the information would be limited to that provided by the utilities in their response to the Department's November 22, 2002 request for information.³ Whether there are privacy or other concerns may depend on what particular information will be shared. For

² If utilities disclosed any information obtained through the DTA, they could be punished by fine. G.L. c. 271, § 43 (punishing by fine any person who discloses any information concerning "persons applying for or receiving general public assistance . . . directly or indirectly derived from the records, . . . of the [DTA] . . .").

³ In its response, FG&E indicated that its database information includes, where provided, the customer's name, social security number, address, Unitil 14 digit account number and some public benefit types.

example, the transfer of a customer's social security number may be an unwarranted invasion of privacy under federal and state privacy statutes. See 5 U.S.C.S. § 552a (note), Pub. L. No. 93-579, 88 Stat. 1896, et seq.; G.L. c. 214, § 1B.

Another privacy concern is that the public records statute may apply to the information transferred by the utilities to a government agency. G.L. c. 66, §10. Even though the proposed program would require EOHHS to destroy all non-matching information, customers' privacy rights may be violated if their information were to be disseminated to the public through the public records statute. The agency, as a custodian of public records, may be required to furnish a copy of that information to a person requesting such records, unless the information provided by the utilities is subject to an exemption under G.L. c. 4, §7. One such exemption from public record status is for "data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy."⁴ G.L. c. 4, §7 (Twenty-sixth) (c). If the data related to the matching program were to fall under such an exemption, the data would be protected from disclosure by the government agency.

Finally, given that the proposed matching program would involve the electronic sharing of information, a privacy concern may be raised by the method used to transmit the customer accounts. For example, if the customer accounts would be sent via the Internet, a secured path may be necessary.

⁴ Similarly, DTA regulations provide that "[i]f disclosure of personal data may constitute an unwarranted invasion of personal privacy, the personal data is not a public record." 106 CMR 104.080. That regulation further provides that disclosure of personal data may constitute an unwarranted invasion of privacy when: (1) the personal data is not of common knowledge, not of public record, and not in public view; (2) disclosure will more likely than not be embarrassing or offensive to the data subject; and (3) there is no legitimate public interest in disclosure sufficient to outweigh the potentially embarrassing or offensive nature of the disclosure. Id.

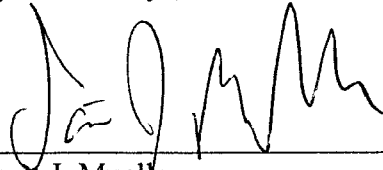
III. CONCLUSION

FG&E appreciates the opportunity to respond to the Department's briefing question and supports the possibility of the matching program in order to expand subscribership in the RDR program. FG&E believes that the Department can address a number of the privacy concerns discussed herein by limiting the amount of information to be shared and providing for an opportunity for customers to opt out of disclosure of their personal information.

Respectfully submitted,

FITCHBURG GAS AND ELECTRIC
LIGHT COMPANY

By its attorneys,

A handwritten signature in black ink, appearing to read 'Scott J. Mueller', is written over a horizontal line.

Scott J. Mueller
Rebecca L. Fowler
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
260 Franklin Street, 23rd Floor
Boston, MA 02110
Tel: (617) 439-9500
Fax: (617) 439-0341

DATED: July 8, 2003

BS 89682